

he knows of it or *abets* it, but that is quite a different matter. I allude here simply to any possible responsibility on the sole ground of the relationship which exists; nor is a guardian criminally responsible for his minor ward's offence⁸.

SECTION II.—CIRCUMSTANCES AGGRAVATING AN OFFENCE.

§ 1.—*Enhanced Punishment under Special Circumstances.*

Just as there are circumstances under which acts which would otherwise be offences are excused, so there are circumstances under which criminal acts are aggravated or their legal character changed.

In the Forest Act no attempt has been made to provide for the specific increase of punishment on the ground of aggravating circumstances, except in the one instance of punishment of offences against the rules for the control of timber in transit, made under section 41 (B. section 43). Section 42 (B. section 44) provides that if the offence is committed, (a) after sunset and before sunrise, or (b) after preparation for resistance to lawful authority⁹, or (c) in the case of a second conviction of a *like* (not necessarily the same) offence, the punishment may be doubled. In these offences there always is an amount of fraud and criminality of purpose for which no excuse can be found. Ignorance, or the wants of the moment, may tempt a man to steal some forest produce, without there being any deliberate or habitual crime: but no one who tries to steal wood while it is floating towards its destination, or who alters property marks on it, or buries it in the sand to enable him afterwards to remove it, can plead such an excuse.

⁸ It would appear that some of the Continental laws adopt a different principle. The Bavarian law (Art. 68), if I understand it rightly, makes them criminally liable, unless they can prove that they were not in a position to prevent the commission of the offence. The French law (C. F., 206) makes husbands, fathers, mothers, and guardians responsible for pecuniary damages under *civil* law.

⁹ This of course is rare, but some years ago cases did occur on the Salween in British Burma, in connection with a curious case in which a party of adventurers went into the forests beyond British territory and forcibly supermarked a quantity of timber, and afterwards with armed force rescued this from its original and proper owners, when they tried to get hold of it on its floating down the river to a timber station.

§ 2.—*Enhanced Punishment on Second Conviction.*

In the Penal Code however (and consequently a grave forest offence of the kind punished under that Code might fall within the rule) provision is made by section 75, that any person who has been convicted of any offence under Chapter XII (Offences relating to Coin and Stamps) or Chapter XVII, Offences against Property (theft, robbery, breach of trust, receiving of stolen property, cheating, mischief, criminal trespass, &c.), the said offence being punishable with imprisonment of three years or upwards, and is again convicted of *any* offence punishable under these chapters, which is of the same magnitude as regards punishment, he may be transported for life, or receive double the amount of punishment otherwise awardable (up to a limit of ten years in the case of imprisonment)¹⁰. The Whipping Act also provides that flogging may be *added* to other punishment in certain cases of second conviction (of the *same* offence however).

¹⁰ The Bavarian Forest Law of 1852 (Art. 58) admits of aggravating circumstances, and gives a very instructive list. And I may advise the Forest Officer in India to study them, because it must be remembered that although our law does not recognize aggravating circumstances as raising the *maximum punishment provided by law*, except in the specific instances stated in the text, yet there is always a wide discretion left to the Magistrate trying the case, whether he will award the maximum sentence or one much less. Hence "aggravating circumstances," such as in the nature of things may be adduced in evidence to establish the greater criminality of the offence and so affect the amount of sentence, should be proved in criminal trials when they exist, independently of any special effect to be produced by them in certain cases only.

The Bavarian Law enumerates the aggravating circumstances thus:—

- (a) Offence during the night (before sunrise or after sunset).
- (b) On Sunday or legal holiday; because then the absence of the means of prevention or detection in the Act is more to be counted on.
- (c) Offender provided with devices to prevent his recognition (*e.g.*, thief with crape over his face, &c.).
- (d) Offender armed with fire-arms.
- (e) Cases where the cutting or removal of forest produce is effected by means which exaggerate the damage.

Example.—Hacking a branch or a stem with an axe instead of a saw; not only cutting the stem but grubbing out the roots, so that the tree cannot coppice.

- (f) The offender runs away after being called on to stand and give himself up.
- (g) Refuses his name and residence or giving false one.